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16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA

18 CHELSEA, LLC, <i>et al.</i> ,)	Civil No. C-07-5800 SC
19 Plaintiffs,	)	(AND RELATED CASES:
20 v.	)	C-07-6045 SC; C-07-5926 SC)
21 REGAL STONE LIMITED, <i>et al</i> , <i>in personam</i>,	)	IN ADMIRALTY
22 M/V COSCO BUSAN, <i>in rem</i>,	)	REPLY/RESPONSE OF UNITED
23 Defendants.	)	STATES, PLAINTIFF IN RELATED
	)	CASE NUMBER C-07-6045 SC, TO
	)	REPRESENTATIONS AND/OR
	)	STATEMENTS OF LAW BY
	)	DEFENDANT REGAL STONE IN
	)	OPPOSITION TO MOTION FOR AN
	)	ORDER TO SHOW CAUSE
	)	IN RELATED
	)	<u>CASE NUMBER C-07-5800 SC</u>

1 Plaintiffs in *Chelsea, LLC, et al., v. Regal Stone Limited, et al.*, No. C-07-5800 SC, have
 2 moved for an Order to Show Cause. Defendant Regal Stone has filed an opposition. The United
 3 States takes no position with respect to the merits of the motion, but instead files this limited
 4 reply/response solely with respect to certain representations made by the defendant, the owner of the
 5 COSCO BUSAN, concerning the United States' involvement in the claims process instituted by
 6 Regal Stone. We specifically are troubled by Regal Stone's implication that their settlement (or non-
 7 settlement) of claims is controlled by the United States and its agencies. That is not the case – as
 8 Regal Stone well knows.

9 The defendant has implied to the Court (if not stated outright) that the United States controls
 10 the defendants' claims settlement decisions as to the various fishermen. See, e.g., Regal Stone's
 11 Memo in Opposition, page six. What the shipowner defendant has not told the Court, however, is
 12 that the claims process they cite for federal involvement and control, commencing at page six of the
 13 defendant's memo, is a process whereby injured fishermen and others potentially can submit claims
 14 *to the United States* (the U.S. Coast Guard, National Pollution Funds Center ("NPFC")) in the event
 15 the defendants fail or refuse to pay injured persons.¹ This is made expressly clear by 33 C.F.R. Part
 16 136.1(a), which states (emphasis added):

17 § 136.1 Purpose and applicability.

18 (a) This part prescribes regulations for--

19 (1) Presentation, filing, processing, settlement, and adjudication of claims authorized
 20 *to be presented to the Oil Spill Liability Trust Fund (the Fund)* under section 1013
 21 of the Oil Pollution Act of 1990 (the Act) (33 U.S.C. 2713) for certain
 22 uncompensated removal costs or uncompensated damages resulting from the
 discharge, or substantial threat of discharge, of oil from a vessel or facility into or
 upon the navigable waters, adjoining shorelines, or the exclusive economic zone;

23 * * * *

24 ¹ To the extent injured parties' claims were to be submitted to and thence paid by the NPFC,
 25 the United States then would take *via* subrogation all the claims and rights of the injured parties as against
 26 Regal Stone and other responsible parties. 33 U.S.C. § 2715(a) and (c). The United States then would
 27 proceed against the responsible parties/defendants (e.g., Regal Stone) to recover the monies paid to the
 persons injured by the spill.

(c) Nothing in this part—

* * * * *

(4) Affects the authority of the United States or any State or political subdivision thereof to impose additional liability or additional requirements relating to a discharge, or substantial threat of a discharge, of oil.²

The issue before the Court in plaintiffs' pending motion instead concerns claims submitted to the defendant shipowner and its representative pursuant to a privately administered claims process (administered by Hudson Marine) pursuant to their own private handling of those claims. Let us be clear: contrary to Regal Stone's papers, the United States does **not** control the defendants' claims handling; nor their decisions as to whom the defendants should pay (or not); nor decisions as to how much a person or plaintiff should be paid (or not) by the defendants; nor decisions as to how to structure the claims handling process by defendants so as to include (or exclude) certain persons or private plaintiffs, such as the plaintiffs in *Chelsea LLC*.

Lest Regal Stone argue otherwise, we offer a simple solution: let the COSCO BUSAN's owner come forward with sworn declarations and documentation whereby the United States has made the decision to pay (or deny or modify) a settlement request and/or claim submitted by any fishermen to defendants and their representative/declarant, Hudson Marine. Conversely, since Regal Stone has asserted in their papers that Hudson Marine is independent of Regal Stone and the other defendants (a point emphasized by Regal Stone in bold and italicized highlighting at page six), let them make available all communications concerning any advice by and between Hudson Marine, defendant Regal Stone, and the latter's counsel concerning the claims, claims process, and the decisions to pay or deny claims. If Hudson is indeed independent of defendants, as Regal Stone has stated without qualification to the Court, there should be no claim of work product or privilege and thus no need for the privilege log that otherwise would be required. Alternatively, if Regal Stone

² Insofar as the private claims process they have initiated, the only formal claims requirements placed upon the defendants/responsible parties pertain to the requirements concerning their public *advertisement* of whatever claims process they initiate for payment of claims to persons injured by the spill.

1 and its counsel are not privy to those communications, they may state that fact in a declaration.

2 Dated: February 1, 2008.

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